Filed 3/26/09 In re Webb CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MARVIN WEBB on Habeas Corpus.	B207647 (Los Angeles County Super. Ct. No. BH004709)

PETITION for a writ of habeas corpus following order of the Superior Court of Los Angeles County, Peter Espinoza, Judge. Petition granted.

Marvin Webb, in pro. per., and Melanie K. Dorian, under appointment by the Court of Appeal, for Petitioner.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Jennifer A. Neill and Charles Chung, Deputy Attorneys General, for Respondent.

In 1985, Marvin Webb was sentenced to an indeterminate prison term of 15 years to life for second degree murder, plus two years for use of a firearm. In 2005, the Board of Parole Hearings (Board) found Webb unsuitable for parole.[1] Webb has filed a petition for a writ of habeas corpus. As the Board's decision is not supported by "some evidence," we grant the petition as prayed.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. Commitment Offense

On November 18, 1984, a drive-by shooting occurred in Compton. Webb has said that several of his friends, some of whom were members of the Palmer Block gang, had come to his house and told him that someone had thrown a piece of wood at one of the friends' car and there was going to be a fight. The friends told Webb to get his gun and come along. Webb said that when he got out of the car, he heard shots and began shooting into the crowd, wanting to help his friends. He has denied knowing whether the fight was gang-related. Two men were wounded during the shooting, one fatally. Investigation led to the arrest of Webb and James Hood. Webb has admitted he was one of the shooters.

Webb pleaded guilty to and was convicted of one count of second degree murder, with a firearm enhancement. He was subsequently sentenced to a total prison term of 17 years to life.

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[1] In 2002, the Board found Webb suitable for parole. Then-Governor Gray Davis reversed the decision.

B. Social History

Webb was born on March 5, 1966, one of five children. His father died when he was 10, and he was raised by his mother. He remains close to his mother and siblings, largely through phone calls and letters. His mother and sister also visit him.

Webb finished 11th grade before dropping out of high school. He earned his GED in 1988 while in prison.

Webb does not have a pre-incarceration work history because he entered the Department of Corrections (now the Department of Corrections and Rehabilitation) (CDC) at age 19. He reports having no substance abuse history or current problem.

Webb was married from 1992 to 1997 and had one son from that relationship. His son was shot and killed at age 15. He remarried in 1999.

Webb admitted he would occasionally ride bikes with members of the Palmer Block gang, but denied affiliation with any gang or that the shooting was gang-related.

Webb's contacts with law enforcement as a minor consisted of a 1978 arrest for stolen property and burglary; he was counseled and released. In 1982, he was arrested for receiving stolen property, notably a schoolyard key. He was also arrested for possession of marijuana for sale, but denied personal use. During the same year, Webb received a three-year probationary sentence for grand theft. He also has an arrest for truancy. None of the arrests led to placement with the Youth Authority.

He has no adult record other than the commitment offense.

C. Prison Record

Webb was received at CDC in March 1985. His disciplinary record includes one "CDC 115" rule violation[2] in 1986, for failure to report to work. He has received 10

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[2] A "CDC 115" documents misconduct believed to be a violation of law or otherwise not minor in nature. (See Cal. Code Regs., tit. 15, § 3312, subd. (a)(3); *In re Gray* (2007) 151 Cal.App.4th 379, 389.)

"CDC 128-A" counseling chronos,[3] none for violence. Most were received for absence from work assignments, the most recent in 1995.

Webb has acquired a variety of skills while in prison. He obtained his certification in small engine repair, has learned cabinetry, taken courses in electronics, worked in the culinary area, and studied computer repair. In his various work assignments, he has received average to above average ratings from his supervisors. For the two years prior to the 2005 hearing, Webb was working without pay just to have a job.

Webb has also upgraded educationally, earning his GED in 1988.

With regard to self-help and life skills programs, Webb participated in anger management courses in 2002 and 2004, upgraded computers for a special project in 2004, participated in a course on fatherhood, and regularly participated in meditation classes.

D. Psychological Evaluations and Insight Into Offense[4]

In the December 2004 psychological evaluation, the psychologist's DSM-IV[5] diagnostic impressions were as follows: AXIS I[6] — No contributory clinical disorder; AXIS II — No contributory personality disorder; AXIS III — No contributory physical

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3 A "CDC 128-A" documents incidents of minor misconduct. (See Cal. Code Regs., tit. 15, § 3312, subd. (a)(2); *In re Gray*, *supra*, 151 Cal.App.4th at p. 389.)

4 As the Supreme Court recently stated, "Petitioner's psychological reports map the path of . . . rehabilitation." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1194.)

5 The American Psychiatric Association publishes the Diagnostic and Statistical Manual of Mental Disorders, Text Edition (4th ed. 2000) (hereafter DSM-IV-TR), which includes all currently recognized mental health disorders.

6 The American Psychiatric Association's classification system of mental disorders includes five axes or dimensions. (DSM-IV-TR, *supra*, at p. 27.) Generally, the system calls for information to be organized into five "axes" in order to assist clinicians in planning treatment and assessing prognosis: (1) clinical disorders; (2) personality disorders; (3) medical conditions; (4) psychosocial and environmental problems; and (5) global assessment of functioning. (DSM-IV-TR, *supra*, at p. 27.)

disorder; and AXIS IV — Life-term incarceration. The psychologist listed Webb's GAF[7] score as 90 (out of 100). The psychologist stated: "It is obvious from the above diagnostic impression that there is no psychiatric reason for the inmate not to be paroled. In fact, his psychiatric condition is unchanged from his last Board of Prison Terms Hearing at which time he was granted a parole date."

The psychologist then assessed Webb's violence potential. Considering "the inmate's arrest history, infraction history in the Department of Corrections, his substance abuse history and current behavior in the Department of Corrections . . . [¶] . . . [¶] the inmate's violence potential both in the institutional setting and the community appear to be below average. This opinion is completely consistent with previous psychiatric reports and is consistent with the [Correctional Counselor I's] current report which states[,] 'The writer believes the prisoner would probably pose a low degree of threat to the public at this time if released from prison.'"

The psychologist dismissed concerns about substance abuse and found Webb had come to terms with the underlying causes of his criminal behavior, observing that "[h]e does understand the significant role peer[] groups played in his criminal offense and his poor impulse control. No additional self help programs are recommended at this time." The psychologist added that, even the Deputy District Attorney at Webb's last hearing recognized "that the inmate has explored his commitment offense and come to terms with the under[lying] causes." As for what treatment Webb might need once paroled, the psychologist said only that "he may need some assistance in adjusting to the community as he has been incarcerated for a very long time. There is no doubt with the assistance of

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[7] The Global Assessment of Functioning (GAF) is one of five axes or dimensions included in the American Psychiatric Association's classification system of mental disorders. Using a point scale from one hundred down to one and organized into ten-point descriptive ranges, e.g., 80-71, 50-41 or 20-11, GAF scoring reflects higher functioning in the higher numbers. (DSM-IV-TR, *supra*, at p. 33.)

his parole agent he will adjust to the free community and become a contributing member of society."

The psychologist further addressed Governor Davis's concerns about Webb. Specifically, Governor Davis stated Webb was mitigating his culpability by denying his gang involvement. The psychologist questioned Webb, who "indicated that although he was affiliated with the gang . . . he was not officially a gang member. In [a] practical sense there is little difference and Mr. Webb now admits to these affiliations and states that his activities were 'stupid.' It should be noted since his incarceration there is absolutely no indication that the inmate has been involved or affiliated in any way [with] the prison gangs . . . . Although the Governor's office correctly identifies that the commitment offense is by all intents and purposes gang related, it gives the inmate absolutely no credit for the last 18 years of his life. It is absolutely clear that such affiliations are no longer a part of Mr. Webb's behavior."

The psychologist dismissed the Governor's belief that Webb should attend a 12-Step program: "[I]t is of no value currently." With respect to the Governor's view that Webb would be unable to hold a job, the psychologist was equally dismissive: "What this inmate has that typical parolees do not have is a strong supportive family and a secure offer of employment when he is released. The Board recognized this when they indicated that the inmate had [a] very good parole plan, supportive letters from his family including both employment and resident opportunities. The inmate's parole period should be unremarkable."

The psychologist suggested that Governor Davis's "attitude and political consideration" motivated his decision to rescind Webb's pending parole more than "the strides the inmate has made throughout his incarceration." The psychologist was unequivocal: "This clinician strongly recommends to the Board . . . that they once again consider the stri[d]es that this inmate has made and give him a date of parole."

With respect to Webb's remorse and insight into his behavior, an earlier psychological evaluation is consistent with the 2004 evaluation. In the 1999 evaluation, the psychologist stated that Webb's "current level of insight and judgment in general and

specifically regarding his commitment offense are very good and substantially supports a positive prediction of successful adaptation to community living."[8] The psychologist further stated that if Webb were released to the community, "his violence potential is considered to be no more than the average citizen in the community." In addition, "[t]here are no significant risk factors which may be precursors to violence for this inmate."

At the 2005 parole hearing, Webb was asked how he felt about his crime today, and he responded: "I feel bad, you know, what I did to the family it shouldn't have happened[.] I took something from them that they will never get back and I understand the pain that I brought to th[eir] family and you know it shouldn't have happened. [¶] . . . [¶] I am sorry for that pain I brought to that family doing that crime." In his own "closing statement," Webb expressed remorse again: "When I committed this crime I was 18 years old. My behavior was reckless and selfish. Today I would like to express my deepest sorrow to the family of and friends and representatives of the [victim's] family. I am truly sorry for what I did. I brought pain into their home and family and lives of the [victim's] that was reckless."

E. Parole Plans

Webb plans to live with his mother, who lives about a quarter of a mile from his wife. He explained that he didn't know "how it is to be married and living with somebody, coming from a place like this, it might be to[o] much pressure on me. So I would rather live with my mother and then gradually take the steps needed to be the family man."

Webb has an employment offer from a plumbing company. He also has an offer from an auto dealer.

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8 The Life Prisoner Evaluation Report (not prepared by mental health professionals) states that when Webb was interviewed for that report, he "did not feel any remorse for the crime but did accept responsibility for it."

The record contains letters of support from his late son's grandmother and one of his sisters, a long-time friend, and a youth intervention organization.

F. District Attorney's Position on Parole

The District Attorney opposed Webb's parole, as did the Los Angeles Sheriff.

G. The Board's Decision

On July 27, 2005, the Board found Webb unsuitable for parole. The reasons given were: multiple victims were attacked, and one was killed; the offense was carried out in a dispassionate and calculating manner; Webb armed himself in preparation for "what appeared to be a gang related incident"; "[t]he offense was carried out in a manner that demonstrates exceptionally callous [dis]regard for human suffering"; the offense appeared to be in retaliation for someone throwing something at a car; Webb had failed to profit from society's attempts to correct his criminality; and Webb had not sufficiently participated in beneficial self-help and therapy programs "considering the amount of time you have been incarcerated." The Board acknowledged that the psychologist had stated that the Board should consider the strides Webb had made and give him a parole date. The Board also stated Webb's parole plans were sufficient, that he had "viable residential plans," and that he had "viable and acceptable employment plans as well as marketable skills." The Board noted the District Attorney's and Sheriff's opposition to parole and found that he "need[ed] further therapy in order to come to terms of [*sic*] the underlying cause of the offense in that it is the opinion of this panel that you have not been fully forthright with us today in regards to this (indiscernible)." The Board indicated its concern regarding Webb's statement "about firing three shots hitting two persons running at a distance of approximately 40 feet yet you had never fired the weapon before nor it was not your attempt [*sic*] to hit anyone when you shot into this crowd." The Board noted Webb's minimal disciplinary history, vocational achievement, and participation in self-help programs, but said these factors did not outweigh the fact that "(indiscernible) the board is denying your parole." The Board therefore recommended that he "complete

a vocation if you can, . . . take advantage [of] whatever self-help and therapy programs . . . are available to you[,] . . . and that you . . . continue remaining disciplinary free."

H. The Habeas Corpus Proceedings

Webb filed a petition for a writ of habeas corpus in Los Angeles County Superior Court in November 2005. The court issued an order to show cause, and the Attorney General's office filed a return, and Webb filed a traverse.

The Superior Court found "some evidence" supported the Board's decision because multiple victims were attacked, injured, or killed in the same or separate incidents, Webb's explanation of the shooting was not credible, and the motive for the crime was trivial in relation to the offense. In addition, Webb had a juvenile criminal record, albeit not a violent one, and the Sheriff's Office and District Attorney's Office both opposed parole. Despite "several positive gains," including a "very favorable" psychological report and a prior finding of suitability for parole, there was some evidence to support the unsuitability finding. The court thus denied the petition.

Webb filed his petition for a writ of habeas corpus in this court in May 2008. On July 1, 2008, we granted respondent's request for a stay. We vacated the stay on September 12, 2008 and ordered respondent to file an opposition. The Warden filed an informal response, to which Webb filed an opposition. On October 8, 2008, we issued an order to show cause, set a briefing schedule, and appointed counsel. The Warden filed a return, and Webb filed a traverse. The case is now ready for decision.

DISCUSSION

Webb contends the Board articulated no evidence that his parole would pose a current threat to public safety. We agree.

A. Governing Law

The purpose of parole is to help prisoners "reintegrate into society as constructive individuals as soon as they are able," without being confined for the full term of their sentence. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477 [92 S.Ct. 2593].) Although a

prisoner has no constitutional or inherent right to be conditionally released before the expiration of his sentence (*Greenholtz v. Nebraska Penal Inmates* (1979) 442 U.S. 1, 7 [99 S.Ct. 2100]), in this state, Penal Code section 3041[9] creates in every inmate a cognizable liberty interest in parole, and that interest is protected by the procedural safeguards of the due process clause. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205 ["petitioner is entitled to a constitutionally adequate and meaningful review of a parole decision, because an inmate's due process right 'cannot exist in any practical sense without a remedy against its abrogation'"], quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664; *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, 914-915.)

Section 3041, subdivision (b), establishes a presumption that parole will be the rule, rather than the exception, providing that the Board "shall set a release date unless it determines that the gravity of the current convicted offense . . . is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed." (See *Board of Pardons v. Allen* (1987) 482 U.S. 369, 377-378 [107 S.Ct. 2415] [unless designated findings made, parole generally presumed to be available].) "[I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1211; *Irons v. Carey* (9th Cir. 2007) 479 F.3d 658, 662 [section 3041 vests "California prisoners

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9 All references to section 3041 are to that section of the Penal Code. Section 3041, subdivision (a), provides as relevant: "One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally set a parole release date as provided in [s]ection 3041.5. . . . The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime."

whose sentences provide for the possibility of parole with a constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest that is protected by the procedural safeguards of the Due Process Clause"].)

When assessing whether a life prisoner will pose an unreasonable risk of danger to society if released from prison, the panel considers all relevant, reliable information available on a case-by-case basis. The regulations set forth a nonexclusive list of circumstances tending to show suitability or unsuitability for release. (Cal. Code Regs., tit. 15, § 2402, subds. (c), (d).)[10] Factors tending to indicate suitability include: (1) the absence of a juvenile record, (2) a stable social history, (3) signs of remorse, (4) significant life stress motivated the crime, (5) battered woman syndrome, (6) significant history of violent crime, (7) the inmate's age, (8) realistic plans for the future, and (9) institutional behavior. (§ 2402, subd. (d).) Circumstances tending to show unsuitability include: (1) the commitment offense was committed "in an especially heinous, atrocious or cruel manner,"[11] (2) a previous record of violence, (3) an unstable social history, (4) sadistic sexual offenses, (5) psychological factors, and (6) serious misconduct while incarcerated. (§ 2402, subd. (c).) "In sum, the Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205.)

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[10] Regulation references are to Title 15 of the California Code of Regulations unless otherwise indicated.

[11] The regulation specifies the factors to be considered in determining whether the offense was committed in an especially heinous, atrocious or cruel manner as: "(A) Multiple victims were attacked, injured or killed in the same or separate incidents. [¶] (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder. [¶] (C) The victim was abused, defiled or mutilated during or after the offense. [¶] (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. [¶] (E) The motive for the crime is inexplicable or very trivial in relation to the offense." (§ 2402, subd. (c)(1).)

The "core determination" thus "involves an assessment of an inmate's *current* dangerousness." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205, emphasis in original.) The Board is authorized "to identify and weigh only the factors relevant to predicting 'whether the inmate will be able to live in society without committing additional antisocial acts.'" (*In re Lawrence*, *supra*, 44 Cal.4th at pp. 1205-1206, quoting *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 655.) "[D]irecting the Board to consider the statutory factors relevant to suitability, many of which relate to postconviction conduct and rehabilitation, the Legislature explicitly recognized that the inmate's threat to public safety could be minimized over time by changes in attitude, acceptance of responsibility, and a commitment to living within the strictures of the law." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1219.) As a result, the "statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1211.) The Board can, of course, rely on the aggravated circumstances of the commitment offense as a reason for finding an inmate unsuitable for parole; however, "the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also established that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his . . . commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1214, emphasis in original.)

B. Standard of Review

"[W]hen a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some

evidence confirms the existence of certain factual findings." (*In re Lawrence, supra,* 44 Cal.4th at p. 1212, emphasis in original.) The standard is "unquestionably deferential," and "limited to ascertaining whether there is some evidence in the record that supports the [Board's] decision." (*In re Lawrence, supra,* 44 Cal.4th at p. 1210.) Nonetheless, the standard "certainly is not toothless, and 'due consideration' of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision — the determination of current dangerousness." (*In re Lawrence, supra,* 44 Cal.4th at p. 1210.) Our inquiry thus is "not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record before the Board." (*In re Lawrence, supra,* 44 Cal.4th at p. 1221, emphasis in original.) The Board or Governor must articulate a "rational nexus" between the facts of the commitment offense and the inmate's current threat to public safety. (*In re Lawrence, supra,* 44 Cal.4th at pp. 1226-1227 [finding no evidence supported Governor's determination that Lawrence remained a threat to public safety in view of her "extraordinary rehabilitative efforts specifically tailored to address the circumstances that led to her criminality, her insight into her past criminal behavior, her expressions of remorse, her realistic parole plans, the support of her family, and numerous institutional reports justifying parole, as well as the favorable discretionary decisions of the Board"].)

C. Analysis

Reliance on the aggravated circumstances of the commitment offense as a factor in finding an inmate unsuitable for parole is proper, but there must also be "something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicat[ing] that the implications regarding the prisoner's dangerousness that derive from his . . . commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*In re Lawrence, supra,* 44 Cal.4th at p. 1214.) The Board did not purport to rely on anything other than the commitment

offense and made no mention of any connection to its finding that Webb's release would pose an unreasonable risk of danger to society. Nothing in Webb's pre- or post-incarceration history, or his current demeanor and mental state support a prediction of current dangerousness. The Board failed to offer a single reason why Webb remained a public safety risk, 21 years after the commitment offense, nor did they "establish[] a rational nexus between those factors and the necessary basis for the ultimate decision — the determination of current dangerousness." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1210.) Webb's juvenile history involved primarily theft-related offenses and a single drug-related arrest, but no acts of violence. Similarly, his disciplinary record in prison mainly consisted of failure to report for work assignments. As the psychologist noted, there was no evidence that suggested "even the slightest assaultive behavior."

The Board's assertion that Webb had not been fully forthright regarding the circumstances of the offense[12] and required further therapy to understand the underlying reasons for committing the crime is not just unsupported, but flatly contradicted by the record. The psychologist reported that Webb had accepted responsibility for his actions,[13] and throughout the hearing, Webb expressed remorse for his crime and the pain

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12 The Board's own statement of what Webb said that gave them this impression is somewhat confusing: "By the statements that you made about firing three shots hitting two persons running at a distance of approximately 40 feet yet you had never fired the weapon before nor it was not your attempt [*sic*] to hit anyone when you shot into this crowd."

13 In the 2004 evaluation, the psychologist stated: "In previous psychiatric reports . . . the inmate minimized his involvement in the criminal activity which led to the death, indicating that he had shot at trees etc. After participating in various self help groups . . . , he became increasingly able to cope with the terrible crime he had committed. As a result he was more able to accept responsibility for his criminal behavior. This has been well documented. After the reports prepared for the Board . . . in 1995 it is clear that the inmate is remorseful for his criminal behavior." The psychologist also stated: "It is clear from the above that [Webb] requires no further self help groups or treatment while incarcerated." The psychologist saw "no value" in Webb attending a 12-Step program.

he caused the victim's family. While Webb may not have been articulate in his expressions, there can be no question that he did, in fact, express to the psychologist and the Board his awareness of the impact of his conduct and his remorse for it.

In a case such as this, "in which the record is replete with evidence establishing petitioner's rehabilitation, insight, remorse, and psychological health, and devoid of any evidence supporting a finding that [he] continues to pose a threat to public safety — petitioner's due process and statutory rights were violated by the [Board's] reliance upon the immutable and unchangeable circumstances of [his] commitment offense." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1227.) We conclude that, just as in *Lawrence*, there was no evidence in the record to establish that Webb's parole currently poses a threat to public safety, and his rights were violated by the Board's reliance upon the circumstances of his commitment offense and unsupported claims regarding his lack of remorse.

In the 1999 evaluation, the psychologist reported Webb's "current level of insight and judgment in general and specifically regarding his commitment offense are very good and substantially supports a positive prediction of successful adaptation to community living." In addition, "Webb described the circumstances surrounding his commitment offense [and] acknowledged that he pled guilty . . . . However, he denied any intent to shoot anyone, but he did say that he shot into a crowd, hitting two people and killing one. He expressed appropriate remorse for his crime and empathy for the victims."

DISPOSITION

The petition for a writ of habeas corpus is granted. The Board is directed to find Webb suitable for parole unless, within 30 days of the finality of this decision, the Board holds a parole suitability hearing and finds, based on new evidence, that he currently poses an unreasonable risk of danger to society if released on parole.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.